

VIRGINIA

BOARD OF ACCOUNTANCY

ADJUDICATION MANUAL



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CHAPTER 1

Overview of This Manual

The Virginia Board of Accountancy ("Board") is required by statutory mandate to take appropriate action against license holders or organizations to ensure the protection of the public. The general statutory mandate provides the Board with the authority to investigate possible violations of a Board's basic law (practice acts or regulations), and provides the Board with authority to enforce these laws by revoking, suspending or restricting a license if a violation is proven.

In addition to the general statutory mandates and the Board's basic law, the disciplinary process is governed by the Virginia Administrative Process Act, Section 2.2-4000 et seq. of the Code of Virginia (1950), as amended ("Code"), the provisions of law generally applicable to the regulation of professions and occupations, and by court decisions interpreting these laws. Both the Board and the Attorney General's Office provide significant resources to support the Board in the quasi-judicial role of hearing charges of misconduct which have been made against a regulated person or entity.

This manual is designed to provide guidance on the investigation of complaints filed against Certified Public Accountants (CPA) and Certified Public Accounting Firms. It has been prepared by the Enforcement Division of the Virginia Board of Accountancy. This manual should be used in conjunction with the Board of Accountancy Regulation.

CHAPTER 2

Receipt, Acknowledgement, And Review of the Complaint

Consistent with statutory duties of the Director of the Board (“Director”), all reports received by the Board that may allege misconduct are referred to the Complaint Intake department (Enforcement). All information is reviewed to determine if a violation of law or regulation may have occurred. If a report is accepted for investigation it is given a Case number and recorded in the agency’s Master Complaint Log.

A. Initial Receipt (Intake)

A complaint will always be **date stamped** immediately upon receipt. This is important because the date this agency receives the complaint may be what ultimately determines the complainant's ability to seek redress of alleged violations, even if this agency is not the appropriate agency to investigate the complaint. The receipt date by a State agency becomes the receipt date for other State agencies. A complaint asks a State agency to take action concerning allegations of violations of regulations and state statutes. The correspondence need not be directed to the correct agency or part of an agency in order for it to be a complaint.

The Enforcement Manager is responsible for determining if the information received warrants investigation. Initially, Enforcement Manager reviews the information, checks the licensure status of the subject of the report and identifies possible violations of laws or regulations to the Enforcement Committee with a brief summary explaining the details and major points. If the Enforcement Manager requires additional information to make a determination, a preliminary investigation is instituted. Various types of records and documents may be obtained, interviews may be conducted by telephone, or correspondence may be generated to gather information to assist in making the initial determination.

Matters Which Do Not Warrant Investigation

If the Enforcement Manager determines that the information does not appear to warrant investigation, it is referred to the Executive Director for review. If the Enforcement Committee concurs with the Enforcement Coordinators recommendation, the information is entered into the Enforcement Matters folder in the shared directory for tracking. If the Enforcement Committee determines that the matter requires further investigation, it is returned to the Enforcement Coordinator with an explanation of the Committee's specific request.

The source of the information is notified by the Enforcement Coordinator, in writing, of the determination not to investigate the case. Whenever possible, reports or complaints received which do not fall within the Board's jurisdiction are referred elsewhere. Persons who believe they are entitled to reimbursement, restitution or damages are advised to consider pursuing their claim through civil action.

The following are examples of items/documents that will not be considered a complaint, unless the item **contains a signed cover letter specifically** asking that this State agency take action concerning the allegations:

- inquiries seeking advice or information;
- courtesy copies of complaints addressed to another local;
- newspaper articles unless the person is using the CPA designation without a valid license;
- allegations of tax evasion or of violations that the BOA does not have jurisdiction over which will be sent to the perspective Departments/Agencies;
- courtesy copies of internal grievances;
- allegations submitted with no supporting documentation;
- Allegations that a violation has been committed in another state.

When it is obvious from the information submitted that BOA has no jurisdiction over the respondent alleged to have violated), BOA will refer it to the appropriate agency. When the correspondence is a complaint and it appears that BOA may retain it, it will be assigned a case

number at this point -- even if it does not contain enough information to clearly explain the discrimination that is alleged. A separate case number may be assigned to each named recipient in the complaint. Complaints from more than one person against the same recipient should generally be assigned separate case numbers to help comply with the requirements of the Privacy Act and the Freedom of Information Act.

Additional allegations from the same complainant against the same recipient after the investigative process has begun can be reviewed on a case-by-case basis to determine whether the allegations should be added to the open complaint or treated as a new complaint. Retaliation complaints that are received after an investigation has begun should be assigned a new complaint number.

A person may file a third party complaint, i.e., a complaint that is filed on behalf of another named individual(s). BOA will contact that individual (or, where the victim is a minor child or incompetent adult, contact the victim's parent, guardian, or attorney) on whose behalf the complaint is filed to ensure that the named victim wishes to pursue the allegations raised on his/her behalf. If the person declines to pursue the complaint, BOA will close the complaint and inform the third-party complainant of the reason for the closure. A memo will be put in the file explaining the steps that were taken and the reasons that the complainant did not wish to pursue the complaint.

B. Acknowledge the Complaint

The Complaint will be acknowledged within 15 days of receipt with a simple boilerplate letter stating that the correspondence has been received and is being reviewed for jurisdiction or probable cause. The letter need not state a deadline by which the decision will be made, unless a particular statute or regulation provides otherwise. The letter is simply to let the complainant know that the correspondence has been received and is under review. This acknowledgment helps reduce the number of calls and requests that are received from upset complainants who do not know if their correspondence has even been received.

C. Determining Whether the Complaint is Complete

Once the correspondence received is deemed to be a valid complaint and it has been assigned a docket/case number, review the information for completeness, it must have the following:

1. A ***signed***, written explanation of what has happened; The Official Complaint Form (See Appendices)
2. The action took place in Virginia;
3. The person or group is a licensed CPA or CPA Firm Registered/Licensed with the Board of Accountancy;
4. Supporting documentation to substantiate any and all allegations;
5. Sufficient information to understand the facts that led the complainant to believe that a violation has occurred and when the violation took place.

Each complaint will be worked to ensure that sufficient information has been received to properly evaluate the complaint and determine probable cause. The Board will provide appropriate assistance to complainants, including persons with disabilities and individuals who speak a language other than English, who may need help in providing the information needed to properly assess jurisdiction, probable cause and investigate the complaint.

Please note that, while the list above indicates a complaint must be in writing, the Board will accept complaints filed in alternate formats from persons with disabilities. For example, the complaint may be filed on a computer disk, by audio tape, or in Braille. If the complainant is unable to write and cannot have someone write out the complaint or cannot tape it, the Enforcement Manager may write out the allegations provided over the telephone by the complainant and send the complaint to him or her for signature. The complainant will be asked in what format s/he would like written documents that are sent; generally, they should be sent in the format in which the complaint was received from the complainant. In those cases in which

complaints are filed in formats such as audio tape or computer disk, the Enforcement Manager will ask that the complainant sign the Privacy Act Release Form before proceeding with the investigation.

Complaints in languages other than English will be translated and responded to in the language in which they were received, to the greatest extent possible. In addition the **Privacy Act Release Form** should also be translated or other steps taken to ensure that the complainant understands what is contained in it and the legal implications of signing the form.

D. Contact the Complainant

It will often be necessary to contact the complainant by telephone or a face-to-face visit to discuss the information needed to process the complaint. In instances in which the Board will need further information in writing; an Official Complaint Form will be sent to the Complainant. However, the Complainant will be advised that he or she is not required to use the Complaint Form to submit the complaint or additional information, but rather may choose to simply provide the information required in some other format. It will be explained that without the information requested in the items marked with a star (*), the Board will be unable to process the complaint further.

E. When the Complainant is Represented By an Attorney

If the complaint is submitted on behalf of a complainant by an attorney, a letter of representation must accompany the complaint and the attorney will be contacted for any additional information needed. The attorney may be asked if the Board can contact the complainant directly to discuss the information needed. In addition, if it appears from the information received that the complainant is represented by an attorney (especially if the complaint states that the matter raised has been or soon will be filed in court); the complainant will be asked whether he or she is represented by an attorney concerning this complaint. If this is the case, the attorney will

immediately be contacted to request the information needed or to request permission to contact the complainant directly. If the complainant is represented by an attorney, and a good faith effort to contact the attorney has been made (notes will be made of any attempts to contact the attorney) by telephone with no success, the request will be put in writing to the attorney and a copy will be sent to the complainant. If still unsuccessful, a letter will be sent to the complainant notifying him/her that the complaint will be closed if the information needed is not received by a specified date; with a copy of this letter to the complainant's attorney.

F. Setting a Deadline for the Complainant to Provide Information

The complainant will be given a specific deadline by which the requested information should be submitted, generally 15 days from the date of the Boards written request to complete a complaint. It will be explained in the letter that failure to provide the requested information by that date will result in closure of the complaint. If the information has not been received by that date, the complaint will be closed and the Complainant will be sent a letter stating the case is closed and why. If enough information is received to complete some allegations in a complaint but not others, only close those allegations that remain incomplete will be closed and therefore the Enforcement Division will proceed with the analysis and investigation process of the others.

CHAPTER 3

Creating The Case File

The Case File is a structured compilation and repository of all documents and information, within this agency's possession, pertaining to the case. A Case File will be established for each complaint accepted for investigation.

Complaints that are administratively closed for lack of jurisdiction, because they are untimely filed, for failure to exhaust local remedies, or for failure to state a claim over which your office has jurisdiction will not be given a Case File number.

The purpose of the Case File is to establish a methodology for the systematic compilation and **structured storage** of all documents, records, and information associated with the case. This is done in such a manner that the Case File (a) provides the basis and supporting documentation for the Investigative Report, and (b) allows a reader of that report to easily verify the facts upon which it is based.

A. Format for the Case File

The Case File will include the following:

Section I –LEFT SECTION- Case Communication History - This section has two types of entries, and is attached to the inside left-hand of the file folder.

- Case Communication History. This entry describes each session of communication with the Respondent or Complainant to determine how much administrative time is spent with this case. The purpose of this log is to record all contacts and activities relevant to processing the complaint for which there is no paper trail. The log is to be used as a reference of the actions taken by the investigator on the case. (Not available to FOIA)
- Screen Print (See Appendices) of current status with the Board- To maintain the current license status with the Board. (Not available to FOIA)

Section II –RIGHT SECTION- Information received such as the Official Complaint Form and supporting documents. (Available under FOIA)

Section III- RIGHT SECTION- External Correspondence - All external correspondence sent is included under this section to include standard boilerplate letters to the Complainant and to the Respondent kept in chronologically (i.e., most recent first), sequence. (Available under FOIA)

Section IV –RIGHT SECTION- All Responses from the Respondent. (Available under FOIA)

Section V –RIGHT SECTION- **Investigative Report** – (Chapter 9-Page 30) This section contains the Investigative Report which is the formal analysis made by the investigator. (Available under FOIA)

CHAPTER 4

Determining Jurisdiction and Identifying Issues

Once the Board has determined that the correspondence received is a complaint, it must be determine if this agency is responsible for investigating all or some of the allegations it raises. Jurisdiction over both must be determined (1) the organization or agency that is alleged to have jurisdiction over the violations, and (2) the subject matter of the issues the complaint addresses.

A. Jurisdiction

In order to determine whether BOA has jurisdiction to investigate the complaint, the complaint should meet certain basic criteria:

- The act must have taken place in the State of Virginia.
- The subject matter (i.e., issues) addressed by the complaint must be covered by one or more of the statutes and or regulations that BOA is responsible for enforcing.
- The complainant must come under the Boards jurisdiction by way of licensure or Substantial Equivalency.

If the complaint meets these criteria and is not affected by any regulatory exemptions or exceptions, BOA most likely has jurisdiction to investigate the complaint. If there is insufficient information to determine whether it meets these criteria, the complainant will be contacted to get this information. Any jurisdictional questions will be resolved **at the outset**, prior to investigating the allegations.

B. Immediate Referral to Another Agency - BOA has the responsibility to make a good faith effort to refer the complaint (or those allegations for which we do not have jurisdiction) to the appropriate agency that can handle the case.

C. **Complaint Basis** The complaint must allege wholly or in part a violation of any Virginia statute or regulation including the Professional Standards. These violations are subject to disciplinary action by the Board possibly resulting in revocation.

D. **Pre-Investigative Administrative Closures**

Determining if the complaint is appropriate for investigation, Alternative Dispute Resolution (Mediation or Conciliation) or should it be closed?

Upon approval from the Enforcement Committee, the Board need not proceed with or continue a complaint investigation and attempts at resolution of an allegation under certain circumstances, which include the following:

- 1) The complaint is so weak, attenuated, or insubstantial that it is facially without merit, or so replete with incoherent statements that the complaint, as a whole, cannot be considered to be grounded in fact and the Enforcement Committee has been notified and have given permission to close the complaint at the staff level.
- 2) The complaint is a continuation of a pattern of previously filed complaints involving the same or similar allegations against the same recipient or other recipients that repeatedly have been found factually or legally insubstantial by this agency.
- 3) The same allegations and issues of the complaint have been addressed in a recently closed complaint or compliance review you have conducted within the same time frame as the recently closed complaint.
- 4) Litigation has been filed raising the same allegations. Such cases may be re-filed following termination of the proceeding if there has been no decision on the merits or settlement of the complaint allegations. As an alternative, BOA may investigate the complaint if the trial will not begin for an extended period of time or if BOA believes that the case raises important legal or

policy issues it wishes to pursue with the approval of the Enforcement Committee. The Enforcement Committee may consider suspending investigation of the complaint (rather than closing it) and monitoring the court action.

5) The same complaint allegations have been filed with another Federal, State, or local agency, or through a recipient's internal grievance procedures, including due process proceedings, and you anticipate that the agency will provide the complainant with a comparable resolution process. The complainant should be advised that she or he may re-file the completion of the other agency's action.

6) The information received from the complainant does not provide sufficient detail to proceed with complaint resolution.

7) A complaint over which BOA otherwise has jurisdiction may be closed when BOA transfers or refers the complaint to another agency for investigation.

8) The death of the complainant makes it impossible to investigate the allegations fully.

E. Notification of Closure

The Board will notify the complainant (and the respondent if prior notification has been sent) if the Board will not proceed further with the complaint. The letter to the complainant (and recipient, if appropriate) should state that the complaint is being closed and explain the reason(s) for the decision. The closure letter should also include the reminder of the Freedom of Information Act notice.

CHAPTER 5

The Investigation

It is the responsibility of the Board's Enforcement Investigator to conduct an investigation by interviewing potential witnesses, obtaining copies of relevant documents and accumulating evidence.

Typically, the investigator will interview the source of the initial report and all witnesses or persons with pertinent information. After collecting and reviewing relevant documents, the investigator will conduct an interview with the respondent (the person being investigated or responding to a complaint). The results are fully documented as a written report, which is submitted to the Enforcement Committee.

Cases that document unlicensed activity are presented to the appropriate Commonwealth's Attorney for consideration of prosecution as a criminal matter if no response is received from the Cease and Desist Order that is mailed to the person.

All investigators are sworn personnel, duly authorized by the Executive Director to conduct investigations and inspections, in accordance with Sections 54.1-2506 and 54.1-3308 of the Code, respectively. Because cases may involve violations of criminal law, the local Commonwealth's Attorney may conduct a criminal investigation concurrent with the Board's investigation of regulatory violations. The Board may conduct a joint investigation with an office of the Commonwealth's Attorney, and the findings of the criminal investigation may be made part of the Board's investigative report.

A. Determining Probable Cause

Upon receipt of a report of investigation, the Enforcement Committee conducts a review to determine if probable cause exists and charges should be issued against the respondent. The process used must be fair, unbiased and in compliance with law. If probable cause is found, the result is typically that a Consent Order is issued, or that a pre-hearing consent agreement is

reached with the respondent. If probable cause is not found, the source and the respondent are so notified.

This section discusses the steps involved in a complete investigation of a complaint. These steps would also occur when BOA conducts a CPE or Peer Review compliance review. As discussed in the previous section, Approaches to Complaint Resolution, BOA may decide that it is appropriate to initiate settlement negotiations at any time during an investigation. However, BOA will ensure that there is enough information to discuss settlement to be certain that the resolution is sufficient for the case at hand. In cases where a full investigation is needed to make legally sufficient findings, BOA will identify all aggrieved victims, and determine appropriate resolution. BOA will identify the best possible administrative approach to take up front to the extent possible, determine what kind and how much evidence will be needed, and remember that it is up to the CPA or CPA firm regarding the burden of proof.

When the Enforcement Committee receives the investigative report from the Enforcement Department a preliminary review of the case is made during the Enforcement Committee meeting to determine whether probable cause exists to proceed with an administrative proceeding on charges that one or more of the Board's statutes or regulations may have been violated.

If it is agreed that the information should to be presented to the Board as a possible summary suspension, an Enforcement Report is provided to the Board with all recommendations listed requiring the Board's approval.

Should the Board decide that a consent order be entered that summarily suspends a regulant's license, the order is mailed to the respondent, along with a cover letter.

If the case is not processed as a summary suspension, or if the Enforcement Committee determines that additional information is needed, the case will be returned to the Enforcement Coordinator with instructions outlining the needed information. However, the case is usually complete and, the staff submits the file to at least two Board members (Enforcement Committee) to review the report and make an independent recommendation to the Board as to probable cause.

Sometimes, a respondent or his attorney may contact Board staff and initiate negotiations resulting in a consent agreement which may be ratified by the Enforcement Committee or by the full Board if suspension or revocation is the sanction. The Board may determine that the matter should be resolved differently and may, for example, seek an expert opinion or initiate further fact-finding.

If the reviewing Enforcement Committee members independently conclude that there is probable cause to believe a violation of Board law or regulation has occurred, the Enforcement Committee will make its recommendations to the full Board in an Enforcement Report which will require approval by the full Board. In certain circumstances, the Enforcement Committee may request that an Assistant Attorney General review and approve the notice prior to conducting the informal conference.

Regardless of whether the initial review of the case is conducted by the Enforcement Committee members or by Board staff, the methods and types of further action available to Board are as follows:

- If the investigation reveals that there is no jurisdiction and/or no probable cause, the complaint may be dismissed and the case closed without any type of disciplinary action taken against the licensee.
- If the facts are complete and there is probable cause, a consent order may be offered to the respondent in lieu of an informal conference, but the respondent is advised that an informal conference may be requested. By agreeing to or not contesting the findings of fact, conclusions of law and a sanction contained in the consent order, the respondent acknowledges the validity of the complaint. Once the respondent has signed and returned the consent order, it is presented for ratification to the full Board if the sanction is suspension or revocation. A committee or full Board, after reviewing the findings of fact, conclusions of law and sanction, may adopt, modify, or reject the consent order. The full Board may also request further information from the Enforcement Committee, schedule an informal conference, or dismiss and close the matter. Should a committee or full Board agree to the entry of the consent order, the case will be closed.

B. Complainant and Respondent Notification

If BOA decides that there is probable cause to proceed with investigation of the complaint, the Complainant and the Respondent will be notified that BOA has accepted the complaint for investigation. The notification letter to the Complainant and the Respondent should contain the following information:

- 1) The basis for the complaint including who filed the complaint with the Board;
- 2) A brief statement of the allegations over which your agency has jurisdiction;
- 3) A brief statement of your agency's jurisdiction over the recipient to investigate the complaint;
- 4) An indication of when the parties will be contacted, if statute prohibits notification, the statute must be cited;
- 5) A copy of the complaint and any and all supporting documents that were submitted.

By providing the Respondent with copies of all information regarding the allegations of a violation, you are providing “Due Process” to the accused.

If you are prepared to do so at this point, you can consider the following two options in complaints that raise limited (usually individual) allegations:

- The Board will expect a written response statement to all allegations listed in the complaint from the Respondent within 15 days. This response must include all appropriate policies, procedures, and documents relating to the complaint.
- Included in the notification will be an offer to engage in ADR (settlement negotiations) to resolve the complaint. This will only be done if BOA understands the nature of the resolution that is being sought and has possession of the information needed to determine resolution.

C. Planning for the Investigation

Complaint investigation and resolution will be preceded by planning; the approach will be developed based on the nature and complexity of the issues involved. Whether or not an Investigative Plan (IP) is prepared, all case files will set out the specific allegations to be resolved and, if appropriate, the expected internal time frames to be adhered to by the investigator or investigative team.

The extensiveness of an IP depends on the complexity of the issues involved. Some investigations may require revisions to the IP, or a supplemental IP, after receipt of information from the recipient or after an onsite investigation is conducted.

The basic IP will help the investigator focus on the principle issues to be explored in the course of the investigation, as well as the sources of evidence available to resolve them. An IP will include at least the following:

- Jurisdictional information; (Does the violation come under this Board's Jurisdiction?)
- Identification of bases and issues; (State the basis of the complaint and the allegations)
- Identification of the applicable legal theories; (Determine theoretical resolutions)
- Conclusions drawn from the analysis of the data or other evidence already gathered; (The Probable Outcome Given the Obvious Violations)
- Description of the documentary, testimonial, and statistical evidence required to complete the investigation and the best sources and means of obtaining each type of evidence;
- Anticipated sequence of case activities, including onsite visits if needed;
- Anticipated timeframes for obtaining and analyzing evidence (if appropriate); and,
- Statement of likely or enunciated recipient defenses and a description of the evidence required to test their validity.

D. Identification of Bases and Issues

The investigator will determine if the complainant alleges that a violation of statute or Board regulation is wholly, or at least in part, responsible for the complaint: this is the basis for the complaint.

BOA will carefully analyze what you have received from the complainant and from the recipient (if, for example, BOA has received a response from the Respondent or the complainant has provided you with letters written to him/her by the Respondent). This information will be important in deciding how much and what kind of additional information you will need to request and violation of which regulation had occurred. BOA will conduct some preliminary interviews with the complainant's witnesses and include this information in your analysis of how to proceed.

5. Description of the evidence required to complete the investigation and the best sources and means of obtaining each type of evidence

Documentary evidence will be in written form, and will consist of business records, memoranda, letters, applications, charts, logs, handwritten notes, etc; virtually any material or format. BOA will include computerized data within the general category of documentary evidence, and consider whether data should be requested in computerized form and "hard copy." If voluminous records are needed from the recipient, it will be useful and timesaving to obtain data in computer form in order that assessments and calculations can be made more readily. Testimonial evidence refers to oral evidence.

BOA will develop interview questions based on oral and written information and any other available data, and conduct interviews with the complainant, Respondent's staff, and witnesses, as appropriate with the assistance of the Board's court reporter when needed

CHAPTER 6

Evidence

A. Evidentiary Proof

Evidentiary proof is an inductive process where demonstrable facts (e.g., items of evidence) serve as building blocks to structure a determination of compliance or noncompliance. This "structure" can only be as sound as the evidence that is its foundation. Different types of evidence can contribute in different ways to the proof for the findings; a little of one kind of evidence may be just as good or better than a lot of another type of evidence, if the latter is weak and unreliable.

B. Direct Evidence

Direct evidence is evidence of the actual, subjective intent of the person(s) charged with a violation. It may take the form of an admission of the violation, although this will rarely occur. Direct evidence encompasses more than just admissions; it includes any facts tending to establish the subjective motives of persons involved in the alleged discrimination. This might include any of the following:

- public statements or speeches
- minutes of hearings
- facially discriminatory actions/legislation; and
- contemporaneous statements (e.g., attributed by third parties).

The investigator will only exhaust all sources likely to support the complainant and all sources likely to support the recipient; there need not be equal amounts of evidence for each party. An investigation conducted in this manner might reveal that there is no evidence to support the complainant's allegations and ample evidence to support the recipient's version of the facts. In this case, the investigation would be complete.

C. Requesting Information from the Respondent

Generally, in gathering information from the Respondent, an initial request for response letter is sent to the Respondent requesting information relevant to the allegations under investigation. The information request letter may take any of several forms. It may be:

An information boilerplate request letter should contain:

- Identification by case number;
- Citation to the statute and/or regulations under which the investigation is being conducted;
- Reference to the agency's legal authority for access to information;
- The information requested;
- An offer to settle or resolve the complaint, if appropriate; and,
- A deadline for responding to the request for information.

D. Determining Whether an Onsite Visit is Necessary

An onsite investigation will not be necessary where any one of the following conditions are present:

1. All of the allegations have been addressed and supporting documents have been submitted with the response from the Respondent;
 2. The Respondent is out of the State of Virginia;
 3. The Respondent can provide written documentation to verify his/her position in the response to the agency's information request letter.
-

E. Pre-Onsite Activities

Upon the determination that a BOA Investigation requires an onsite visit to either the Respondent or the Complainant, a notification letter will be sent to both parties prior to arrival. BOA will have already informed the complainant at the time of the acknowledgment of the complaint of your office's intention to investigate his/her allegations. The onsite notification letter to the complainant will include, but need not be limited to, the following:

- Anticipated date of the onsite visit.
- Time and place for interviewing the complainant. (The interview will not take place at the recipient's place of business.)
- Request for the complainant to provide any additional information and documentation he/she considers relevant to the investigation. This will include a list of witnesses whom the complainant believes have information relevant to the allegations.
- A timeframe to provide the additional information or documentation and list of witnesses.

At this point of the review process, the recipient is already aware of the existence of the complaint, BOA's jurisdiction, the basis of the complaint, and the legal authority to investigate the complainant's concerns. In addition, the letter notifying the recipient of the scheduled onsite visit will:

- Restate the allegations made by the complainant, the basis on which they are made, and the legal authority under which the complaint is being investigated.
- State the section of the appropriate regulation that explains the violation.
- Provide the general time schedule under which BOA will conduct its investigation.
- Request the additional information or data that BOA wants the Respondent to submit for review prior to the onsite, including a timeframe for submission of the information.

- Identify additional data that BOA wants to review during the onsite, as a result of the review of information and data obtained prior to the onsite.
- Request that all of the recipient's staff to be interviewed and staff responsible for the release of additional records be asked to be available as appropriate during your onsite.
- If necessary, BOA will identify the recipient's staff to be interviewed, if this can be determined in advance. 8) BOA will suggest that the recipient designate a liaison person to facilitate this process.
- Interviews

CHAPTER 7

On Sight Interviews

Before conducting the interview, the investigator will know as much as possible about the purpose(s) intended to be served by the interview. He/she will know in advance on which subjects he/she wants the interviewee's unequivocal statement and in which areas he/she might want to wait to pursue questioning. The investigator will make certain strategic decisions as to which witnesses to interview for which purpose, and in what sequence the interviews are to be conducted.

The BOA Investigator will:

- Introduce themselves (**show credentials**) and frame the interviewing process for the interviewees;
- Listen effectively during the interview;
- Distinguish factual information from opinions;
- Be able to deal with negative reactions during the interview;
- Use effective probes;
- Plan and take clear, precise notes; and
- Obtain a signed summary statement of the interview.

A written record of both telephone interviews and face-to-face interviews will be made to preserve the probative value of the information obtained and will be placed in the Case File. Notes and subsequent reports of the interview will contain the following information:

- Case number;
- Name, address, and phone number of the witness;
- Date, time, and location of interview, including whether the interview was conducted by telephone;
- Name of the investigator or person conducting the interview;

- A summary of the questions and responses. (This need not be a verbatim transcript but should accurately reflect the questions posed and the responses of the witness);
 - Signature of the interviewee (if required by your agency).
-

A Interview with the Complainant

Prior to meeting with the Respondent, the Investigator from BOA will hold an in-depth meeting with the complainant. Based on prior information you received from the complainant, you should have already developed a list of questions for the complainant. The purpose of the meeting with the complainant is to:

- Explain the investigation and the mediation/conciliation process;
- Remind the complainant that your role is only to determine, in connection with each allegation raised by the complainant, whether the Respondent did or did not violate specific legal authorities this agency is responsible for enforcing;
- Secure any additional information with respect to the allegations;
- Explain the complainant's rights under the Privacy Act and Freedom of Information Act; and
- Explain that the complainant may be contacted periodically, as necessary, during the investigative process to be given an opportunity to respond to any information that is presented by the recipient that is a factor in your findings.
- Remind the complainant of the prohibitions against retaliation and intimidation.

The desired rapport between the Investigator and the complainant is a relationship in which each understands and accepts the role that the other has in the investigation and resolution of the case at hand.

The complainant should be made to understand:

- That once the case is closed, all of the information submitted regarding the complaint will be made available to the public upon a FOIA request;

- That complaint cases are kept on file permanently;
- That the Respondent will be contacted in order to obtain a response to the allegations;
- That Statute § 54.1-108 of the Code of Virginia, Disclosure of Official Records, **prohibits the Board from disclosing any information regarding open disciplinary cases**, however, the Board will attempt to keep them as informed as possible.

Generally, the Investigator will have already obtained at least the following information from the complainant in the first interview (which is usually by telephone or, if that is not possible, in writing):

- The name and location of the recipient and individuals involved in the case;
- The precise circumstances and chronology of events that led to the action, decision, or condition giving rise to the complaint;
- The identity of any witnesses who can attest to the validity of the complainant's statements, and some indication of the matter on which each witness may be expected to provide information;
- The specific resolution sought by the complainant; and
- Any additional information essential to an understanding of the specific matter giving rise to the case and the environment in which it occurred.

Since much of the information described above will have already been gathered and already in the Complaint File, a face-to-face interview with the complainant will provide the Investigator with an opportunity to evaluate the information given in the context of the complainant's presentation of what happened.

B. **Impartiality of the Investigator**

The BOA Investigator(s) must conduct unbiased investigations. In situations where there may be an appearance of bias on the part of any Investigator, a Supervisor/Director will be advised in writing. In addition, the investigator will not express opinions or conclusions to the public/Complainant/Respondent concerning matters under investigation unless specifically authorized to do so.

CHAPTER 8

The Investigative Report (IR)

A. When to Prepare an Investigative Report (IR)

The Investigative Report (IR) will be prepared whenever a full investigation is completed and the Enforcement Division has all supporting documentation, evidence, responses and statistical information needed for the Enforcement Committee to make a fair and equitable decision or recommendation to the Board.

The IR is a detailed and logical document that (a) sets forth all facts pertinent to the case, (b) analyzes those facts in light of the complainant's allegation(s), and (c) recommends a determination as to the validity of the allegation(s) based on that analysis and the compliance status of the recipient. Generally, the IR is not released to the complainant or the Respondent except in conjunction with a judicial or administrative proceeding. (IFF)

B. Purpose of the Investigative Report

The purpose of the IR is to:

- Organize and present the factual information collected during the investigation.
 - Identify the location in the case file of the specific supportive documentation from which each statement, allegation, conclusion, or determination was drawn.
 - Present an analysis of the information to determine the relevance of the facts to the allegations.
 - Draw conclusions based on the analysis.
 - Provide the Enforcement Committee with a summary of the case file.
-

C. Formatting the Investigative Report (IR)

The IR should contain the following major Sections:

I	Introduction/Summary of Allegations
II	Allegations/Time Line of Events
III	Response to the Allegations from Respondent
V	Conclusion (Up to the Present)
V	Analysis and Recommended Determination

Citations of Board Regulation will be included to direct the reader of the report to the appropriate supporting documentation in the Case File.

Introduction - This section will provide an Executive Summary of the case to include any and all, statutory or regulatory provision which the allegation would violate to include any activities that may have take place prior to accepting the complaint for investigation.

Allegations - In this section of the IR, the investigator should describe a time line of events after the acceptance of the complaint as succinctly and clearly as possible. The investigator should organize the complainant's allegations into a logical sequence that would be necessary to sustain a finding of compliance or noncompliance.

Response to the Allegations from Respondent - Here the investigator will provide the information regarding all allegations from the Respondent. The Respondent must have addressed each allegation with an explanation of who, what, when, where and why.

Where attempts have been made to provide the Respondent with an opportunity to reply to the complainant's allegations, but the Respondent has failed to respond or provide any support for its position, a description of the Investigators efforts to let the recipient respond should also be included in this section.

Conclusion - All facts relevant to the investigator's analysis and recommended determination in the case will be set forth in this section. It is important both to the settlement/conciliation process and for establishing credibility of the determination that only clear, accurate and factual evidence be included in this section. Facts should be presented in a logical sequence, such as the chronological order of the events or by subject matter. Factual issues in dispute should be resolved through examination of the relevant documents. This section is intended only to establish the factual and logical basis for a determination on the merits of the allegations. Each fact or series of related facts should be sequentially numbered and listed separately.

Analysis and Recommended Determination - In this section, the investigator conducts an analysis of the facts presented, and draws his or her conclusions as to the validity of the complainant's allegations based on that analysis and include any similar previous Board action for the Enforcement Committee to use as a guideline to remain consistent.

D. Forwarding the Case File to the Enforcement Committee for Review

Upon completion of the Investigative Report, complete the following prior to sending the case file to the Enforcement Committee for review and recommendation:

- Put all documents in chronological sequence as you received them
- Make sure all documents are appropriately date stamped
- Review the original complaint, then check the Respondents reply to make sure each allegation was addressed completely.
- Separate all exhibits provided by the Respondent with colored paper
- Use a cover memo numbering or lettering each document (See Appendices)
- Never send the originals, only copies, to Both members of the Enforcement Committee

CHAPTER 9

Approaches to Complaint Resolution

This section discusses a number of approaches to resolving complaints. In the past, many agencies investigated complaints by following procedures that required a full investigation, formal consent agreement or informal fact-finding conferences for every case in which a violation existed. BOA has found that a more efficient method is by varying the approaches taken to complaint resolution based upon the nature of each case.

This section suggests a number of alternatives for resolving complaints of Standards of Practice, including the use of alternative dispute resolution (ADR) techniques. As used here, ADR refers to settlement negotiations to resolve a complaint at any stage prior to the issuance of a formal violation notification. Recipients are frequently very positive about resolving complaints in a manner that does not result in the issuance of a violation.

The decision concerning which approach to use is sometimes a difficult one; often, an appropriate resolution is not clear until at least some of the investigation has been completed.

A. Alternative Dispute Resolution (ADR/Settlement)

ADR can consist of anything from the use of a neutral third party or mediator to informally resolving a matter without completing a full investigation. BOA will decide what methods it will utilize in investigating and resolving its complaints. Both the President and the Attorney General have encouraged the use of ADR in matters that are the subject of civil litigation. The Administrative Dispute Resolution Act of 1966, Public Law 104-320, authorizes the use of ADR to resolve administrative disputes...

Formal Mediation - Formal mediation is an approach to resolution that may be considered in a variety of circumstances, both prior to or following the issuance of findings. In mediation, the mediator attempts to assist the parties in working out a resolution to their dispute that is

acceptable to both sides. This does not mean that BOA will lose its ability (or its responsibility) to reach an agreement that is legally sufficient. Rather, BOA has a non-partisan third party who is assisting BOA and the recipient in reaching a resolution of the "dispute." A mediator will attempt to develop a relationship of trust between the parties that could be important to this agency in its future dealings with the recipient. BOA may consult with a local ADR office for additional information as to how ADR is applied and whether the use of a mediator may be appropriate.

The use of ADR does not mean that BOA will ignore the resolution that would be appropriate if a full investigation is conducted. Rather, ADR is a means of resolving cases with basically the same resolution obtained after a full investigation, while avoiding the expenditure of staff time the full investigation requires. When considering whether to use ADR at any point during the case processing, the following will be taken into consideration:

- BOA can/should be open to negotiate a resolution to a case at any point during the processing of a complaint;
- the type of ADR ("settlement approach") will be selected carefully, based upon the allegations, number of persons affected, type and extent of resolution involved, cooperation of the recipient, and other factors;
- the case file will include an explanation of how the resolution was determined to constitute adequate resolution;
- the resolution should provide for monitoring whenever appropriate; and,
- BOA will reopen a complaint if the recipient has not complied with its commitments.

B. If the Complainant Does Not Agree to Settlement

BOA does not represent the complainant, but rather the interests of the citizens of the Commonwealth in ensuring Regulation and statute compliance by its recipients. Therefore, the resolution sought is dictated by the facts of the case and not by the complainant.

If the recipient has agreed to provide what BOA has determined would constitute full resolution (in changes to policies/procedures, resolution to the complainant and other victims, etc.) and the complainant disagrees with the policy changes or refuses to accept individual resolution, BOA may complete the agreement with the recipient and close the complaint on that basis. If the recipient has already offered full resolution to the complainant and no other resolution is appropriate (e.g., change in policies or practices, or resolution for other victims), and the complainant refuses to accept it, BOA may administratively close the complaint for "failure to accept full resolution."

C Pre- Investigation Case Closure through ADR

If a complaint is resolved without an investigation, the complaint resolution letter to the complainant and recipient will contain:

- 1) The basis for the complaint;
 - 2) A brief statement of the allegations over which BOA has jurisdiction;
 - 3) A brief statement of BOA's jurisdiction over the recipient;
 - 4) An explanation of the basis for BOA's determination that the complaint has been resolved;
 - 5) The protection from retaliation and the Freedom of Information Act/Privacy Act paragraphs;
 - 6) A copy of any written agreement should be attached;
 - 7) A notation for the recipient as to when the first monitoring report will be due, if applicable, this may be done by the mediation center; and,
-

D. Full Investigation Approach

Those cases that do not appear to be appropriate for early ADR processing will be handled according to the more standard investigative procedures. As indicated above, BOA may still be able to resolve the complaint successfully prior to issuance of formal findings. This will become evident as BOA proceeds with the investigation.

CHAPTER 10

Types of Closure Letters

To complete a complaint investigation or compliance review, there are usually three types of letters you can use upon direction by the Enforcement Committee.

A. No Violation Letter

The first letter is a No Violation Letter. This letter is issued when the Respondent is found to be in compliance or the Enforcement Committee has determined that there has been no violation of Regulations or Statutes

B. Unfounded Letter

The second letter is a letter of “Unfounded” meaning there were either not enough information to determine if a violation had occurred or there were too many mitigating circumstances regarding the violation and a determination could not be made either way.

C. Letter of Violation/Consent Order

The third letter is a letter indicating a violation which will be in the form of a Consent Order/Agreement. This Consent Order/Agreement is to be issued and directed by the Enforcement Committee when the Respondent is found to be in violation or noncompliance.

All letters are sent to the Respondent and then a letter of information to the Complainant upon the closing of the case.

D. Contents of Closure Letters

All Closure Letters will include the following:

- The complaint or compliance review number, the name of the complainant, and the date the complaint was received.
 - A statement of the jurisdictional authority, including the recipient status and the statutory basis for the investigation.
 - A statement of each allegation and the applicable regulation.
 - An explanation of the status of any issues that were investigated but are not included in the letter or any issues that were raised but not investigated.
 - The name and telephone number of the staff person to contact for additional information.
 - Thanks to the recipient for its cooperation (optional).
-

CHAPTER 11

Disciplinary Action By The Enforcement Committee

A. Consent Orders

Consent orders are typically offered by the Enforcement Committee when the respondent admits to the facts or when the issues are clear. Consent Orders are always the best way to proceed with a case that is a clear violation because if the Respondent agrees to the settlement offered, (terms and conditions) they waive the right to an IFF and the right to appeal. When entered by the Board, the case is closed. The benefits of this tool includes a rapid settlement and avoidance of costly proceedings. While Consent Orders are generally offered prior to an informal conference or formal hearing is scheduled, they may be used anytime prior to a final order being entered.

B. Informal Conferences (IFF) 2.2-4019 and 2.2-4020 of the APA

The Virginia Administrative Process Act provides for two types of proceedings, informal fact finding conferences and formal hearings. An informal conference is required except in a few instances specifically mandated by law (i.e., following summary suspensions and mandatory suspensions). Most allegations of misconduct are resolved after the informal conference.

At an informal conference, a special conference committee (“committee”), consisting of at least two (2) Board members, meet with the respondent accused of a violation in an informal setting for the purpose of allowing the Respondent to speak directly to a member of the Board and explain in their own words. Prior to the convening of an informal conference, the respondent receives a notice that contains the specific allegations and violations asserted by the Board. The respondent receives all information in the possession of the committee that it may rely upon in making a decision. The source of the information that led to the investigation is notified of this session and may attend as this is considered an Open Meeting, available to the public. The Complainant may be called upon to answer questions from the committee members, but is not usually required to do so. Informal conferences are open to the general public and are posted on the Town Hall/ Commonwealth Calendar prior to the meeting date.

If the committee believes there is insufficient evidence to substantiate a violation of law or regulation, the matter is dismissed. If the committee believes there is evidence that a violation of law or regulation was committed, the presiding officer of the IFF will make a recommendation in the way of a formal summary which contains findings of fact, conclusions of law and a disciplinary action/sanction and the rationale for the recommendation. This recommendation is first sent to the Respondent along with a copy of the transcripts from the IFF, then the Complainant, and then sent to each Board member prior to the next scheduled full Board meeting for ratification.

During closed session at the full Board meeting the Board votes (without the presence of the two Board members involved at the IFF level. The sanctions that are decided upon may include the following ranges:

- Place the respondent on probation with terms;
- Reprimand;
- Modify a previous order; and/or
- Impose a monetary penalty.

Additionally, the Board may agree that suspension or revocation of the respondent's license is justified. After the full Board meeting, staff will send to the Respondent a “5-Day letter” indicating that the Board has reduced the findings to a written order and they will be notified upon completion of the order. As noted, this letter must be mailed within 5 days of the Board decision.

C. Setting Up the Informal Fact-Finding Conference

If the Respondent requests an IFF, it must be received in writing for the purpose of including the written request in the case file.

An IFF letter (See Appendices) will be developed and mailed to the Respondent (Due Process) and the complainant for notification of date, time and place of the IFF and the allegations and all exhibits that will be reviewed by the Enforcement Committee.

The package that will be sent to the Respondent will include the following:

1. The IFF Letter to the Respondent
2. The Investigative Report (IR)
3. The Original Complaint
4. The Original Complaint's supporting documents
5. The Respondent's Response to the allegations
6. The Request for the IFF from the Respondent
7. A copy of any and all subpoena's that are requested or may be required
8. Put these documents in a binder

The package that will be sent to the Complainant will be an amended IFF letter that states the time, place and date the IFF will be held. The IFF is considered a public conference.

After the IFF is Completed

- Receive Transcripts
- Make sure you have enough small binders to send a copy of this case file to each Board member, the Board's Counsel, Executive Director, Assistant, and 3 copies to the public once you have received the recommendation from the Presiding Officer..
- Send transcripts to Presiding Board Member for his use in development of the Presiding Officers Recommendation/Summary Report to the Board. (See Appendices)
- Receive Presiding Board Members Summary.

Mail the following to each Board member

- Cover Page with State Seal
- Memo to Board members (See Appendices)
- IFF Letter to Respondent with copy of certified mail green card receipt.

- Presiding Officers Recommendation Report
- Transcripts
- Exhibits

Reporting Each Case to the Board

Provide

- Summary of Allegations (What the complaint is about)
- Facts- The Respondents side
- Presiding Officers Recommended Actions and Rationale (from report)

After the Full Board Review

Send the “5 Day letter” (See Appendices) that will let the Respondent know that the Board has rendered a final case decision and it is being reduced to a Final Board Order and that they will receive a copy as soon as possible.

D. The Formal Hearing

Should a case be referred to a formal hearing, the process begins again with notice to the respondent. A formal hearing may be conducted by a hearing officer, a panel of the Board or the full Board. Committee members who participated in the informal conference proceeding **are excluded** from the subsequent formal hearing. **A formal hearing is an administrative proceeding similar in many ways to a trial. It is open to the public and all parties may call**

witnesses and introduce evidence. The Board decides whether the accused has violated a law or regulation, and if so, it imposes disciplinary action.

At the conclusion of the hearing, **the decision of the Board is announced**, and a final order is served on the respondent. If the respondent wishes to contest the action, **he may appeal the decision to the appropriate circuit court.**

E. Judicial Review

A respondent has the right to appeal a Board's decision to a circuit court. The circuit court may affirm the Board's decision, or suspend or set it aside and remand the matter back to the Board for further proceedings.

The respondent may further appeal the circuit court's decision, as a matter of right, to the Court of Appeals. The Court of Appeals may affirm the Board's decision, or suspend or set it aside and remand the matter to the Board. A further appeal is to the Supreme Court of Virginia, if certain conditions are satisfied.

F. Mandatory Suspensions

Under circumstances where the conduct of a respondent represents a "substantial danger to the public health, safety, or welfare" the Board may meet and summarily agree to suspend a license, certificate or registration. If a good faith effort to assemble a quorum has failed, the Board may meet by telephone conference call.

Also, the law provides for suspension of a license by the Executive Director when a respondent has been convicted of a felony; has had his license revoked or suspended in another jurisdiction and not reinstated; or has been adjudged legally incompetent. Lastly, under certain circumstances, a court may suspend a license for non-payment of child support.

CHAPTER 12

What is an Order

A Board's disposition of a case involving violations of law or a regulation by a respondent is documented in the form of an order and it may be as of July 1, 2007 in the form of a Confidential Consent Order (CCA). An order may result from a disciplinary proceeding or from a negotiated settlement of alleged violations in lieu of further disciplinary proceedings. An order (Board Order) from a disciplinary proceeding, such as an informal conference or formal hearing, reflects a Board's case decision following the proceeding. This type of Order can be appealed through Circuit Court which can start the entire process of adjudication all over again if the Judge so elects to remand the case back to the Board.

Consent Orders/Agreements

An order resulting from a negotiated settlement of alleged violations, either prior to or in lieu of further disciplinary proceedings, reflects a decision agreed to by a committee or a Board and a respondent in the form of a consent order. The consent order or consent agreement cannot be appealed and the Respondent agrees waive rights to an Informal or Formal hearing before the Board. In other words, they AGREE to be responsible for everything that is stated in the "terms and conditions" section to include all violations stated in this agreement.

Board Order

An order which results from an Informal Conference documents the decision by the committee of the Board. The full Board is provided a copy of the IFF proceedings for review prior to the next scheduled full Board meeting. After reviewing the investigative report, transcripts, (by a court reporter) Presiding Officers Recommendation from the IFF, and all exhibits, the Board convenes in executive session to deliberate and reach a final case decision in the matter. If the Board finds evidence of a violation of law or regulation which warrants disciplinary action, that decision is typically announced to the respondent if he is present at the conclusion of executive session and are subsequently provided in writing in the form of a Final Board Order. The Board makes findings of fact and conclusions of law, which form the basis for its sanction.

Board Order

An order which results from a formal hearing represents the final decision of the Board in the matter. After all evidence in the case is presented in the formal administrative proceeding, each party is given the opportunity to submit closing argument or proposed findings of fact and conclusions of law for consideration by the Board or panel hearing the matter. The Board then convenes in executive session to deliberate and reach its final decision. If the Board finds evidence of a violation warranting disciplinary action, its decision is typically announced to the respondent after reconvening in open session. The Board may read the findings of fact, conclusions of law, and ordered sanction (if any), and the decision is transcribed by a court reporter. Subsequent to the proceeding, a written order is provided to the respondent.

Appeal

If the order has resulted from an informal conference, the order becomes “final” thirty-three (33) days after the Order is mailed to the respondent, unless a written request for a formal hearing is received by the Board during that time period. Once a timely written request for an appeal to a formal hearing is received, the order from the committee is vacated and a formal hearing before the Board or a panel thereof is scheduled and held. The order which results from the Board’s decision at any subsequent formal hearing is the final decision and disposition of the case by the Board in the matter.

An order resulting from a formal hearing may also be appealed. An appeal of a Board’s final order following a formal hearing must also be made within thirty-three (33) days from the date of service by mail, and is handled in the judicial system at the circuit court level. An appeal at this level must comply with the procedures in Part Two A of the Rules of the Supreme Court of Virginia, as more fully explained in the following chapter of this Manual. The order of the Board is not automatically vacated when appealed to the circuit court. However, the appealing party may request from the court a “stay” of the Board’s order pending the appeal.

Final orders are matters of public record, according to Sections 2.2-4023 and 54.1-2400.2 of the Code. A copy of a final order is usually mailed to the original source of the complaint. While Board orders are made available to the public, all related disciplinary case information (such as

the investigative report and accompanying records and evidence) obtained and maintained during the course of an investigation or disciplinary proceeding may be considered strictly confidential and remain unavailable to the public.

License Agreement

In all disciplinary matters and proceedings regarding applying for a license, the burden of proof rests with the Board to establish evidence of a violation of law or regulation which governs the practice of that respondent. With reinstatement applicants, the burden of proof rests with the applicant to establish evidence that he is safe and competent to practice.

CHAPTER 13

Monitoring the Terms and Conditions of the Agreement

BOA will monitor agreements that require actions to be taken subsequent to the effective date of the Licensing Agreement, Consent Order/Agreement and Final Order. . Monitoring may or may not require on-site visits, depending on the type of issues involved.

Monitoring activities should be tailored to follow the agreement. The Respondent should be notified upon successful implementation of the agreement. Where the agency determines that the recipient has failed to implement the terms and conditions of the agreement, the recipient should be immediately notified.

Roles of Support Staff

The Enforcement Manager of the Agency receives reports of potential violations, evaluates and records such information, conducts investigations and reports the investigative findings and evidence to the Enforcement Committee for a probable cause determination. The Enforcement Manager is also responsible for preparation of notices (specific written allegations of misconduct) provided to a respondent, presentation of facts and evidence at informal conferences and formal hearings, and preparation of orders.

Investigator is defined as a sworn investigator/Regulatory Board Investigator that assists in the coordination of enforcement of the statutes and regulations including, both licensed and unlicensed activities. The Investigator assists in analyzing complaints to determine if probable cause exists to warrant investigation. Responsible for initial communication, (Intake) both written and oral, to all parties involved in the complaint process. Assists in the determination of eligibility of applicants and assists in the evaluation of applications for completeness and strict compliance with statutes, Board regulations, and policies. Notifies applicants of eligibility

issues and the applicable procedures required under the law and regulations. Assists in the creating, maintaining, and updating accurate state filing system.

The Attorney General's Office is by law the legal representative of all state agencies including the Boards. In certain cases, the Attorney General's Office will assign a prosecutor to present a matter at the administrative proceeding in lieu of Administrative Proceeding Division staff. In all instances, the Attorney General's Office remains as counsel to a Board. Board counsel, who function separately from those who prosecute cases, advise Boards on matters of law and represent Boards in court.

Executive Director/Agency Head

The Executive Director appointed by the Board shall be sworn to enforce the statutes and regulations pertaining to the Board. The Director or investigators appointed by him shall have the authority to investigate violations of the statutes and regulations that the Director is required to enforce. The Director or investigators appointed by him shall also have the authority to issue summonses for violations of the statutes and regulations governing the unlicensed practice of public accountancy, including regulants with expired licenses. In the event a person or entity issued such a summons fails or refuses to discontinue the unlawful acts or refuses to give a written promise to appear at the time and place specified in the summons, the investigator may appear before a magistrate or other issuing authority having jurisdiction to obtain a criminal warrant pursuant to § [19.2-72](#).

All investigators appointed by the Director are vested with the authority to administer oaths or affirmations for the purpose of receiving complaints and conducting investigations of violations of this chapter, or any regulation promulgated pursuant to authority given by this chapter or in connection with any investigation conducted on behalf of the Board. Such investigators are vested with the authority to obtain, serve and execute any warrant, paper or process issued by any court or magistrate or by the Board under the authority of the Director and request and receive criminal history information under the provisions of § [19.2-389](#).

Experts and Consultants

The scope of the Boards' regulatory authority and the range of complaints associated with it demand that Boards not only streamline the complaint review process, but also receive guidance from consultants for licensing and disciplinary matters involving specialized fields of practice.

A Board may contract with an expert in a particular specialty to review the investigative file and, if necessary, to testify on behalf of the Board in an administrative or court proceeding arising from the matter. An expert assists the staff in understanding the standard of practice in the specialty, and in evaluating the evidence to determine whether a regulant performed in accordance with that standard.

Section 54.1-2502 of the Code permits the Board to establish a roster of consultants or experts in the field of Accountancy and to enter into contracts with experts. The Executive Director will execute contracts with consultants or experts on behalf of the Board. Individual Boards are responsible for payment of any fees charged by experts for their services.

Experts customarily are selected from lists of specialists compiled by the respective specialty professional societies and are typically located in a geographical area different from where the complaint originated. Generally, an expert is limited to reviewing the material contained in the investigative file and does not interview the respondent.

The contract with the expert provides that the expert will:

- Be available to work with the Board to develop and present evidence of the alleged violation;
- Review and evaluate a completed investigative report and other supporting material indicating the standard of practice;
- Render in writing a well-documented expert opinion regarding the standard of practice provided by the subject;
- Assist the staff in preparing for any disciplinary proceedings which are brought against the subject practitioner by the Board; and

- Provide expert testimony on behalf of the Board on any administrative or court proceeding arising from the matter.

The Board of Accountancy is an example of a Board which often utilizes experts. Composed of seven (7) members.

CHAPTER 14

Court Review of Agency Action

Appeals from a final decision of a Board must be filed in accordance with Section 51.1-1135.1 et seq. of the Code, and Part Two A of the Rules of the Supreme Court. Venue of an appeal from a final decision of a Board is in the circuit court of the county or city in which the practitioner resides or regularly conducts business.

Pursuant to Section 51.1-1135.1 of the Code, a circuit court will review a case decision on appeal by a party to the case. **On appeal, the burden rests upon the respondent** to designate and demonstrate an error of law subject to review by the court. Such issues of law include: (1) accordance with constitutional right, power, privilege, or immunity, (2) compliance with statutory authority, jurisdiction limitations, or right as provided in the basic laws as to subject matter, the stated objectives for which regulations may be made, and the factual showing respecting violations or entitlements in connection with case decisions, (3) observance of required procedure where any failure is not mere harmless error, and (4) the substantiality of the evidential support for findings of fact. The determination of such fact issues is to be made upon the whole evidentiary record provided by the Board following a formal hearing. When considering the fact issues contained in the record, the court will take due account of the presumption of official regularity, the experience and specialized competence of the Board members, and the purposes of the basic law under which the Board has acted.

Court review is governed by the “substantial evidence” standard. This means that the court’s duty with respect to issues of fact is limited to ascertaining whether there was substantial evidence in the Board record to support the Board’s decision. The court may not second-guess the Board’s decision or substitute its judgment for that of the Board on factual issues as decided by the Board. Reversible error will not be found unless there is a clear showing of prejudice arising from the admission of such evidence, or unless it is plain that the Board’s conclusions were determined by improper evidence and that a contrary result would have been reached in its absence. Under the substantial evidence standard, therefore, the court may reject the Board’s findings of fact only if, considering the record as a whole, a reasonable mind would necessarily come to a different conclusion.

Standing to appeal is governed by Section 51.1-1135.1 of the Code, and is permitted to any respondent subject to a case decision. The guidelines for the court's review are provided by the Rules of the Virginia Supreme Court, promulgated pursuant to Section 51.1-1135.1 of the Code. Rule 2A:2 requires any party appealing from a case decision to file, within thirty (30) days after entry of the final order in a case, a notice of appeal signed by the party or his counsel. The notice of appeal must be filed with the Executive Director of the Board and identify the case decision appealed from; state the names and addresses of the appellant and all other parties and their counsel, if any; specify the circuit court to which the appeal is taken; and conclude with a certificate that a copy of the notice of appeal has been mailed to each of the parties.

Rule 2A:3 requires the appellant to deliver to the Board with the notice of appeal or within thirty (30) days thereafter a transcript of the testimony. The Board must then prepare and certify the record as soon as possible after the notice of appeal and transcript is filed, and transmit the record to the clerk of the court named in the notice of appeal once it has been certified. The Board must then notify all parties in writing when the record is transmitted, naming the court to which it is transmitted. The record on appeal from the Board consists of all notices of appeal, any application or petition, all orders promulgated in the proceeding by the Board, the opinions, the transcript of the testimony, and all exhibits accepted or rejected, together with other material certified by the Board to be part of the record.

Rule 2A:4 requires that within thirty (30) days after the filing of the notice of appeal, the appellant must file a petition for appeal with the clerk of the circuit court named in the notice. The appellant is also responsible for serving a copy of the petition on the Board and every other party, designating the case decision appealed from, specifying the errors assigned, the reasons why the case decision is deemed to be unlawful, and concluding with a specific statement of the relief requested.

ADJUDICATION MANUAL

GLOSSARY

Administrative Process Act (APA) - The procedural requirements for promulgating regulations and for deciding cases, found in Sections 9-6.14:1 through 9-6.14:25 of the Code. The APA supplements the basic law of the Department and the Boards.

Appellant - The party who appeals a case decision of a Board to a circuit court for review.

Appellee - On appeal, the party who argues against the setting aside or the remand of a Board decision.

Board - the Board of Accountancy.

Certify - when referenced to financial information or the practice of public accountancy, are terms which, when used in connection with the issuance of reports, state or imply assurance of conformity with generally accepted accounting principles, generally accepted auditing standards, and review standards. The terms include forms of language disclaiming an opinion concerning the reliability of the financial information referred to or relating to the expertise of the issuer.

Certification - One of the forms of regulation of a profession (as opposed to licensed or permitted). Generally, a lesser standard than licensure, certification may be required of all practitioners of a particular profession or only those who use a particular title.

Client - means a person or entity that contracts with or retains a firm for performance of services by a CPA certificate holder or registration certificate holder subject to Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia and this chapter.

Committee – Enforcement Committee of the Virginia Board of Accountancy

Consent order – An order voluntarily agreed to by both a respondent and a Board. Sometimes called a “pre-hearing consent order” when it is offered in lieu of an informal conference or a formal hearing. Consent orders have the same effect as any order (see below).

CPA Certificate - A certificate as a certified public accountant (CPA) issued by the board pursuant to Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia and this chapter, which shall function as a license, or a corresponding certificate as a certified public accountant issued after meeting *the CPA exam* and other requirements under the laws of any other state.

Formal hearing - A formal administrative proceeding of litigated issues before a health regulatory board, which is conducted in accordance with Section 2.2-4020 of the Administrative Process Act. The parties are the Board of Accountancy and the licensed/certified practitioner alleged to have violated laws or regulations governing their practice. The hearing is conducted before either the full Board, a quorum or panel of the Board, or a hearing officer. The formal hearing is a trial-like proceeding, which includes sworn testimony, cross-examination of subpoenaed witnesses, introduction of evidence, and transcription by a court reporter.

Hearing officer - A person who is designated to preside over administrative proceedings conducted in accordance with Section 2.2-4024 of the Code, when the Board (full Board, a quorum, or a panel thereof consisting of at least five members) does not convene to conduct the hearing itself.

Informal Fact-Finding Conference (IFF) - A fact-finding proceeding conducted by a special conference committee of a regulatory board (or by a hearing officer) with a respondent. It may result in one or more of the following actions: exonerate the CPA or CPA firm; reinstate, place on probation with terms deemed appropriate; reprimand; modify a previous order; and impose a

monetary penalty. The case decision and sanction ordered at this level are final, unless they are appealed or forwarded to a formal hearing if the CPA does not agree with the outcome.

Investigator - The person(s) responsible for conducting the investigation of the complaint. Investigation of the complaint may be part of his or her primary job duties, or a duty assigned only occasionally. Regardless of the situation, the consistent adherence to sound investigative techniques is important to ensure a thorough and legally sufficient investigation.

Investigative Report (IR) - A written time sensitive compilation (time line of events) regarding the statement of alleged violations, background summary, actions as they happened, response to the allegations and any previous Board action regarding similar violations in the past.

License agreement- A decision issued by the Department, a Board, or special conference committee of a Board, pursuant to its statutory authority, affecting the approval of granting a license to an applicant of the Board.

Notice - A statement of specific charges provided to the respondent who is the subject of a complaint. The notice states the time, place, and nature of the proceeding. Also enclosed with the notice is any information on which a Board will rely to make a case decision.

Order – A decision issued by the Department, a Board, or special conference committee of a Board, pursuant to its statutory authority, affecting the license of a CPA licensed by the Board.

Presiding Officer- A person who is designated by the Board of Accountancy to preside over the Board's administrative proceedings conducted in accordance with Section 2.2-4019 and 2.2-4020 of the Code, when the Board (full Board, a quorum, or a panel thereof consisting of at least five members) does not convene to conduct the hearing itself.

Party or parties - A person or persons having a direct interest in the subject matter or outcome of a case; one(s) who could assert a claim, make a defense, control proceedings, examine witnesses, or appeal a case decision, e.g., a respondent.

Probable cause - Reasonable cause; having more evidence for opening or initiating an investigation than against. A reasonable ground for belief in the existence of facts as reported.

Respondent - The person (or facility) being investigated or responding to a complaint.

Service - The delivery of a notice of an administrative proceeding, a consent order, or an order of a Board to a party which charges the party with receipt of the document and subjects the party to the legal effect of it.

Standing - The legal right of a party to assert or enforce legal rights and duties against another. On appeal of a Board or Department decision, the party aggrieved or claiming the unlawfulness of such decision, e.g., the respondent.

Transcripts - A preservation of the basis for a case decision; an official transcript of a formal administrative proceeding prepared during the hearing by a court reporter obtained by the relevant Board, and all evidence entered into the record during the proceeding, with findings of fact and conclusions of law.

Violation - The act of violating a regulation of state statute as in an infringement of a law or regulation.

Vacate - To set aside or render void an order of a Board or an order of the Department.

Code of Virginia

<u>54.1-4400</u>	Definitions
<u>54.1-4401</u>	Applicability of chapter
<u>54.1-4402</u>	Board of Accountancy; membership; qualifications; powers and duties
<u>54.1-4403</u>	General powers and duties of Board
<u>54.1-4404</u>	Board to employ Executive Director; legal counsel
<u>54.1-4405</u>	Board of Accountancy Fund; receipts; disbursements
<u>54.1-4405.1</u>	Board of Accountancy Trust Account; creation; expenditures; excess moneys
<u>54.1-4406</u>	Powers and duties of the Executive Director
<u>54.1-4407</u>	Enforcement of laws by Director or investigators; authority of investigators appointed by Director
<u>54.1-4408</u>	Subpoenas
<u>54.1-4409</u>	Grant of CPA certificate; restrictions on practice; educational and experience requirement...
<u>54.1-4410</u>	Renewal of CPA certificate; continuing education requirements
<u>54.1-4411</u>	Substantial equivalency for nonresident CPA certificate holders and licensees
<u>54.1-4412</u>	Firms
<u>54.1-4413</u>	Unprofessional conduct; enforcement against holders of CPA certificates and permits
<u>54.1-4413.1</u>	Unlicensed practice of public accounting; using the CPA title without a license
<u>54.1-4414</u>	Prohibited acts
<u>54.1-4415</u>	Exemptions from unlawful acts
<u>54.1-4416</u>	Board's powers with respect to hearings under this chapter
<u>54.1-4417</u>	Monetary penalty
<u>54.1-4418</u>	Recovery of cost after grant of formal fact-finding
<u>54.1-4419</u>	Prior convictions not to abridge rights
<u>54.1-4420</u>	Annual audit
<u>54.1-4421</u>	Biennial report
<u>54.1-4422</u>	Description unavailable
<u>54.1-4423</u>	Use of consultants in investigations
<u>54.1-2506</u>	Enforcement of laws by Director and investigative personnel; authority of investigative personnel and Director.
<u>54.1-3308</u>	Power of inspection.
<u>2.2-4000</u>	Short title; purpose
<u>2.2-4027</u>	Issues on review.
<u>2.2-4025</u>	Exemptions operation of this article; limitations
<u>2.2-4026</u>	Right, forms, venue.

Appendix

- A. Official Complaint Form
- B. Investigative Report
- C. Cover Memo to Enforcement Committee for Case Review
- D. Alternative Dispute Resolution Agreement
- E. Consent Order
- F. Board Order
- G. License Agreement
- H. IFF Letter

Commonwealth of Virginia

Board of Accountancy

3600 West Broad Street, Suite 378
Richmond, Virginia 23230-4916 Office (804) 367-8505

Official Complaint Form

How to File a Complaint

1. Include names, addresses, and phone numbers of the person(s) making the complaint and the Certified Public Accountant (CPA) or CPA firm against which the complaint is being filed.
2. Include accurate dates of when alleged actions occurred.
3. List all actions taken by the CPA or CPA firm that you felt were done improperly or unprofessionally.
4. Please tell the Board what actions you have taken to resolve this matter with your CPA or CPA firm.
5. Attach all legible supporting documentation to substantiate your allegations.

Complaints that do not contain specific allegations cannot be processed by the Board. Anonymous complaints will be accepted when there are enough dates and facts to provide the Board with probable cause to investigate.

What will happen when you file an Official Complaint

1. A copy of this complaint form and all supporting documentation will be sent to the CPA or CPA firm to use in the preparation of the response.
2. Your complaint will be investigated and the Board's Enforcement Committee will review the matter to determine if there is a violation of the statutes and regulations governing the practice by CPAs and CPA firms in the Commonwealth.
3. The investigation will be closed when there is a lack of evidence to indicate that a violation has occurred.
4. The Board may take disciplinary action to suspend, revoke, impose monetary penalties, or fail to renew a license when there is a regulatory violation.
5. The Board of Accountancy cannot assist you with a fee dispute. Fee disputes are matters that can be resolved through the courts.
6. All closed complaints are available to the public.

You will be notified when the case has been closed and the action taken by the Board of Accountancy.

Print, complete and Mail:

WHO IS MAKING THIS COMPLAINT?

NAME: _____
ADDRESS _____
HOME PHONE _____ WORK PHONE _____

WHO IS THE CPA/CPA FIRM THAT THIS COMPLAINT IS AGAINST?

NAME _____
ADDRESS _____
HOME PHONE _____ WORK PHONE _____

List dates and actions by the CPA/CPA firm that you felt were performed improperly or unprofessionally.

List all names of all individuals involved in this matter and their relevance.

Specify what actions you have taken to resolve this matter with your CPA or CPA firm.

Location(s) where work was performed (complete address).

If more than one person or business is involved in this complaint, please specify who physically performed the work.

Was this a written contract (please attach a copy) or a verbal agreement?

PLEASE ATTACH ALL SUPPORTING DOCUMENTATION TO SUBSTANTIATE ALL ALLEGATIONS MADE IN THIS COMPLAINT.

This space is provided to you for additional comments.

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[illegible]

INVESTIGATIVE REPORT

Name of Respondent: Name of Individual CPA or Registered Firm

Investigator: Name of Investigator

Summary of Allegations:

The Board is in possession of documentation alleging unethical tax preparation practices performed by name of CPA or CPA firm for the name of complainant or victim which may constitute a violation of the following Sections of the Code of Virginia and Board Regulations:

18 VAC 5-21-120 (E) Professional Competence

A regulant shall undertake only those professional services that can reasonable be expected to be completed with professional competence.

18 VA 5-21-120 (F) Due Professional Care

A regulant shall exercise due professional care in the performance of professional services.

Narrative

On November 29, 2006, the Board received notification from name of person filed alleging the following:

1. The use of client funds and the manipulation of Estimated Tax payments.
2. The lack of asset accounting in preparation of homeowner association tax returns.
3. Tax preparation fee exceeds the amount of tax.
4. The Firm was contracted by -----

On August 24, 2006, the Board received a response to the allegations from the person who responded, as stated below:

When developing a time line of events, be as specific as possible, use quotes as often as possible. The purpose of this form is to provide the Enforcement Committee with a clear concise summary of what the complaint is about, why it was filed, what the violations are if there is enough supporting documentation. Use an outline format with bullets.

BOARD STATIONERY

MEMORANDUM

TO: Dian T. Calderone, MTX, CPA
Enforcement Committee
Tyrone Dickerson, CPA

FROM: Jean Grant, Enforcement Manager

DATE: February 14, 2007

RE: Name of Respondent
Case Number Obtained from Master Complaint File

Enclosed please find the complete file on the above-referenced case for your review and recommendation to include the following;

- **Investigative Report**
- **Original Complaint with Supporting Documents**
- **Termination Letter to Complainant**
- **Employment Agreement**
- **Letter Sent to Clients**
- **Letter to Respondent with Certified Mail Return Receipt**
- **Response from Respondent**

MEDIATION PARTICIPATION AGREEMENT

THIS AGREEMENT TO PARTICIPATE IN MEDIATION is entered into between the Board of Accountancy and the undersigned participants including the principal mediation parties, and others present or otherwise participating in the mediation process, including attorneys, and others. By signing below, all of the undersigned agree to the following:

1. **THE MEDIATION PROCESS:** The mediation will be conducted as a problem solving discussion concerning the parties' interests, the issues facing them, the resources needed to satisfy their objectives, and the options which can be generated as possible resolutions of their dispute. The mediators will engage in the following problem solving process;
 - a. An orientation to mediation to give the mediators and the parties an opportunity to exchange information and explore the usefulness of engaging in mediation;
 - b. A facilitated discussion of the specific issues that need to be resolved;
 - c. The generation of possible alternatives to be considered by the parties;
 - d. An evaluation of these alternatives by the parties, paying attention to how well they might resolve the identified issues;
 - e. A tentative decision as to the terms of an agreement with an examination of the workability of the agreement; and,;
 - f. Putting the agreed terms into a written document, reviewing the terms, and making any necessary changes, and;
2. **ROLE OF THE MEDIATOR:** The role of the mediator will be to listen carefully to each participant; clarify statements made and information exchanged for full understanding; ask questions designed to elicit information the parties may need; keep the participants on track and focused on the issues; assist the parties to gather information from each other and to identify ways to gather other needed information; help the parties test and examine potential agreements; and otherwise facilitate negotiations while remaining neutral as to the final outcome. The mediator will remain impartial and will not make decisions for the parties. The mediator will not give personal opinions or professional evaluations of the case.
3. **CONFIDENTIALITY:** All memoranda, work products, or other materials contained in the case file of a neutral or dispute resolution program are confidential. Any communication made in or in connection with the dispute resolution proceedings which relates to the controversy, including screening, intake, and scheduling a dispute resolution proceeding, is confidential.

Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding **except** (i) where all parties to the dispute resolution proceeding agree, in writing, to waive confidentiality, (ii) in a subsequent action between the neutral or dispute resolution program and a party to the dispute resolution proceeding for damages arising out of the dispute resolution proceeding, (iii) statements, memoranda, materials, and other tangible evidence otherwise subject to discovery, which were not prepared specifically for use in and actually used in the dispute resolution proceeding; (iv) where a threat to inflict bodily injury is made, (v) where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime; (vi) where an ethics complaint is made against a neutral by a party to the dispute resolution proceeding to the extent necessary for the complainant to prove misconduct and the neutral to defend against such complaint, (vii) where communications are sought or offered to prove or disprove any of the grounds listed in Section 8.01-576.12 in a proceeding to vacate a mediated agreement or (ix) as provided by law or rule.

A mediated agreement **shall not** be confidential, unless the parties otherwise agree in writing.

4. **VOLUNTARY:** The mediation process is strictly voluntary and shall continue until any party or mediator terminates the process, or until an agreement is reached.
5. **JOINT AND SEPARATE SESSIONS:** The mediator may ask the parties to participate in joint sessions, where all mediator, parties, and other participants are present, and at times the mediator may ask to meet separately(caucus) with each party, in turn.
6. **GROUND RULES:** The parties and other participants will participate in good faith and will treat others with respect and courtesy. In order to create a climate of respect, cooperation and joint problem-solving, participants agree to avoid interruptions, use inappropriate language, personal attacks and other similar actions.
7. **LEGAL INFORMATION AND ADVICE:** The mediator may provide the parties with legal information, forms, copies of statutes, etc. The mediator **will not** give legal advice regarding likely court outcomes, the relative legal merits of a party's case or the opportunity to consult with independent legal counsel at any time and are encouraged to do so.
8. **AGREEMENT:** The parties agree that all terms of any agreement are considered settlement proposals and are non-binding until reduced to final writing and signed by all parties. Any mediated agreement will conclude the dispute and thereby affect the parties' rights with regard to pursuing other

outcome. The parties agree that upon their compliance of the terms in the mediated agreement, the complaint filed with the Board of Accountancy will be closed and no further action will be taken by the Board. **Parties should have any draft agreement reviewed by independent counsel prior to signing the agreement.**

SEEN, ACKNOWLEDGED AND AGREED:

_____ Party	_____ Date
-----------------------	----------------------

_____ Party	_____ Date
-----------------------	----------------------

_____ Attorney (If Applicable)	_____ Date
--	----------------------

_____ Mediator	_____ Date
--------------------------	----------------------

Dates you are available:

*******Please complete this form and return it to the Board office if you agree to participate in the mediation process for the resolution of this dispute***

IN THE
COMMONWEALTH OF VIRGINIA
BOARD OF ACCOUNTANCY

In Re: Name of Respondent

Address of Respondent

City, State, Zip Code

Re: File Number 2005-D05- DCO6-2005

CONSENT ORDER

In lieu of administrative proceedings in this matter, the Virginia Board of Accountancy (“Board”) and Name of Respondent, (“Respondent”), as evidenced by their signatures affixed below, agree to enter into this Consent Order affecting the license of Respondent to practice as a Certified Public Accountant, (“CPA”) in the Commonwealth.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board adopts the following findings and conclusions in this matter:

1. Respondent was issued a CPA license, number 9999 by the Board to practice Public Accountancy in the Commonwealth on January 24, 1977. Said license will expire on May 31, 2006 unless renewed or otherwise restricted.
2. Respondent violated **Section 54.1-4413.A. of the Code** and Board Regulations 18 VAC 5-21-120 (E) and (F) in that;

- a. Respondent failed to sign as preparer of the 2002 and 2003 tax forms for name of Complainant(s), (“Complaint”);
- b. Respondent failed to have adequate knowledge of state tax laws by failing to prepare the Federal Tax return before the State Tax return;
- c. Respondent inappropriately used the unauthorized title of “Assistant Treasurer” on the Complainant 2002 and 2003 tax return as advised by the Internal Revenue Service, (“IRS”); and that,
- d. Respondent failed to provide an opinion letter and financial statements for the Bank of North Amelia upon request by the Complainant.

CONSENT

I, Name of Respondent, by affixing my signature hereto, acknowledge that:

1. I have been advised specifically to seek the advice of counsel prior to signing this document and am not represented by counsel.
2. I am fully aware that without my consent, no legal action can be taken against me, except pursuant to the Virginia Administrative Process Act, § 2.2-4000 et seq. of the Code.
3. I am fully aware that **§ 54.1-4413.A of the Code** provides that the Board may refuse to renew or reinstate any CPA certificate or permit for a period of not more than five years; reprimand, censure or limit the scope of practice of former licensees’ and, notwithstanding the limitations provided in § 54.1-4417, impose a monetary penalty on former licensees or other individuals or entities engaged in the unlicensed practice of public accounting or using the CPA title without a license.
4. I am fully aware that **Board Regulation 18 VAC 5-21-120**, Standards of Conduct for all Regulants, subsections E and F provide for the following:

- E. Professional competence. A regulant shall undertake only those professional services that can reasonably be expected to be completed with professional competence.
- F. Due professional care. A regulant shall exercise due professional care in the performance of professional services.
5. I have the following rights, among others:
- a. the right to an informal conference before the Board;
 - b. the right to representation by counsel; and
 - c. the right to cross-examine witnesses against me.
6. I knowingly and voluntarily waive any further proceedings in this matter under §§ 2.2-4019 and 2.2-4020 of the Code.
7. I neither admit nor deny the truth of the above Findings of Fact and Conclusions of Law, and agree not to contest them in any future proceedings before the Board.
8. I consent to the following Order.

ORDER

WHEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, and with the consent of Name of Respondent, it is hereby ORDERED that the CPA license of Name of Respondent be placed on INDEFINITE SUSPENSION until such time as he can provide documented proof to the Board that he is competent and has met the following terms and conditions:

1. A monetary penalty of \$2,000 to be paid within ninety (90) days of the entry date of this

ORDER.

2. Satisfactory completion of not less than 8 hours of training in “Referencing Circular 230”, 8 hours of training in “AICPA Tax Standards of Practice, and 20 hours of training in the completion and review of “Special Purpose Financial Statements”. This training shall not be

considered part of the Board's continuing professional education ("CPE") requirements. Prior to enrolling in this training, Respondent shall submit training outlines for all programs (computerized and online courses are not acceptable) for approval by the Board. Respondent shall submit proof of satisfactory completion of the training no later than one (1) year from the entry date of this **Order**.

3. Respondent shall place a public notice in the local newspaper stating he is not practicing as a CPA.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

Name of Respondent

Date

CITY/COUNTY OF _____

STATE/COMMONWEALTH OF _____

Sworn and subscribed before me this ____ day of _____, 20____.

Notary Public

My Commission Expires: _____

SO ORDERED:

Entered this ____ day of _____, 20____.

BOARD OF ACCOUNTANCY

BY: _____

Name of Board Chairman, CPA, Chairman

COPY TESTE: _____

Custodian of the Records

IN THE
COMMONWEALTH OF VIRGINIA
BOARD OF ACCOUNTANCY

In Re:

Name of Respondent
Address
Richmond, Virginia 23233

Re: File Number 2007-U12

FINAL OPINION AND ORDER NO. 2007-FO-06

On June 13th, 2006, the Board of Accountancy (the Board) mailed Name of Respondent (Respondent) a Notice of Informal Fact Finding Conference (IFF) by certified mail and certificate of mailing pursuant to the provisions of the Administrative Process Act, Section §2.2-4019, of the Code of Virginia, granting authority to receive and act upon evidence that Respondent violated certain regulations of the Board.

On July 21, 2006, the Board convened the IFF at 3600 West Broad Street, Suite 378, Richmond, Virginia 23230. Respondent was present and not represented by legal counsel. Board Member (Name of Presiding Officer or Board Member presided at the IFF.

On August 28, 2006, the Board mailed a copy of the Informal Fact-Finding Conference Report-Presiding Officer's Recommendations, and notification of the October 24, 2006 Board meeting by certified mail to Respondent. On October 24, 2006, the Board met and reviewed the

record which consisted of the Investigative Report, the transcripts, and exhibits from the IFF. Respondent nor his legal counsel were present at the Board meeting.

The Board adopts the Informal Fact-Finding Conference Report-Presiding Officer's Recommendations, and incorporates it as a part of this Order. The Board finds clear and convincing evidence that Respondent violated the following sections of the **Code of Virginia** (Effective July 1, 2004):

In accordance with the provisions of §§ 54.1-4413 and 54.1-4413.1 of the **Code of Virginia** and Respondent's use of the CPA designation in offering to providing services to the public on an expired CPA license, the Board imposes the following sanction:

- Respondent shall not practice as a CPA in the Commonwealth until the Virginia Board of Accountancy has granted a license to Respondent to practice as a CPA.
- Respondent shall pay a monetary penalty of eight thousand (\$8,000) dollars within ninety (90) days of the entry date of the ORDER.

THE TOTAL MONETARY PENALTY ASSESSED HEREIN SHALL BE PAID WITHIN NINETY (90) DAYS FROM THE DATE OF ENTRY OF THIS FINAL ORDER. THIS MONETARY PENALTY CONSTITUTES A DEBT TO THE COMMONWEALTH AND IN THE EVENT OF A DEFAULT, OR THE RETURN OF A CHECK FOR INSUFFICIENT FUNDS, RESPONDENT SHALL BE RESPONSIBLE FOR A PENALTY FEE OF 10% AND INTEREST AT THE UNDERPAYMENT RATE PRESCRIBED IN SECTION 58.1-15 OF THE **CODE OF VIRGINIA**, AND FOR REASONABLE ADMINISTRATIVE COSTS, COLLECTION FEES, OR ATTORNEY'S FEES INCURRED IN THE COLLECTION OF WHATEVER FUNDS ARE DUE.

AS PROVIDED BY RULE 2A:2 OF THE SUPREME COURT OF VIRGINIA, YOU HAVE THIRTY (30) DAYS FROM THE DATE OF SERVICE (I.E. THE DATE YOU ACTUALLY RECEIVED THIS DECISION OR THE DATE THE DECISION WAS MAILED TO YOU, WHICHEVER OCCURRED FIRST) WITHIN WHICH TO APPEAL THIS DECISION BY FILING A NOTICE OF APPEAL, SIGNED BY EITHER YOU OR YOUR COUNSEL, WITH NANCY FELDMAN, EXECUTIVE DIRECTOR OF THE BOARD OF ACCOUNTANCY. IN THE EVENT THAT THE DECISION WAS SERVED ON YOU BY MAIL, THREE (3) DAYS SHALL BE ADDED TO THE THIRTY (30) DAY PERIOD.

SO ORDERED:

Entered this _____ day of _____, 2006.

BOARD OF ACCOUNTANCY

By _____
Name of Current Board Chairman

COPY TESTE:

Custodian of the Records

**IN THE
COMMONWEALTH OF VIRGINIA**

BOARD OF ACCOUNTANCY

AGREEMENT FOR LICENSURE

Full Name of Respondent (Respondent) was the subject of a licensure eligibility inquiry, File No. 2007-E09, conducted by the Board of Accountancy (Board).

The offer of a conditional license is enumerated in this **Agreement for Licensure**.

Having fully considered Respondent's application for a license to practice public accounting and after consideration of the pertinent facts, Respondent's application for a CPA license is subject only to the following conditions:

1. Respondent shall not practice as a CPA in the Commonwealth until the Virginia Board of Accountancy has granted a license to Respondent to practice as a CPA.
2. Respondent's CPA license shall be placed on indefinite probation for a period of not less than five (5) years from the entry date of the agreement.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

Full Name of Respondent

Date

CITY/COUNTY OF _____
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____

COPY TESTE:

Custodian of the Records

Complete Date

NOTICE OF INFORMAL FACT-FINDING CONFERENCE

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Name of Respondent
Street address
City, State, Zip

Dear Mr. Respondent:

This letter is official notification that an Informal Fact-Finding (“IFF”) Conference of the Virginia Board of Accountancy, (“Board”) will be held on **February 6, 2006**, to consider the information provided to the Board as enumerated in this IFF notice.

The IFF will take place at **3600 West Broad Street, 3rd Floor, Suite # 378, Richmond, Virginia 23230 commencing at 10:00 a.m.**

Please call our office at (804) 367-0725 to confirm your attendance at this IFF conference.

This informal conference will be conducted pursuant to Section 2.2-4019 of the Code of Virginia. The Board will inquire into allegations that you may have violated certain laws and regulations governing the practice of public accounting in the Commonwealth. Specifically, you may have violated Section 54.1-4413 A (6) and (7) of the Code and Board Regulations 18 VAC 5-21-120 (J) Confidential client information. In that, you may have failed to maintain the confidentiality of your client upon being served a subpoena by your client’s litigation adversary’s legal counsel and may have provided confidential information when instructed not to respond to the subpoena until the stated court date.

After consideration of all information, the Board may:

1. Exonerate you;
2. Impose a monetary penalty pursuant to **Section 54.1-4417** of the Code;
3. Offer a Final Order with terms and conditions it deems appropriate.

Further, you have the right to information, which will be relied upon by the Board in making a decision. Therefore, a copy of the documents have been enclosed that will be distributed to the Board for its consideration when discussing the allegations with you and when deliberating upon your case to include the following: (i) this IFF notice; (ii) the Investigative Report; (iii) the documentation substantiating the allegations referenced above; and (iv) the written request for this IFF. These documents are enclosed only with the original notice sent by certified mail/return receipt requested.

To facilitate this proceeding, you must submit three (3) copies of any documents you wish for the Board to consider to XXXX XXXXX, Enforcement Manager, Virginia Board of Accountancy, at 3600 W. Broad St. Suite 378, Richmond Virginia 23230, by February 1, 2006.

Respondent Notice of IFF Conference
December 28, 2005
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A copy of this notice and supporting documentation referenced above will be provided to your attorney if you choose to be represented by one. A request to continue this proceeding must state in detail the reason for the request and must establish good cause. Such request must be made in writing to the Board at the address listed on this letter by yourself or by your attorney and must be received by February 1, 2006. Only one such motion will be considered. Absent exigent circumstances, such as personal or family illness, a request for a continuance after February 1, 2006, will not be considered.

In its deliberations, the Board may utilize Board Regulations and the Code of Virginia. Relevant sections of the Administrative Process Act, which govern proceedings of this nature, as well as laws relating to the practice of Accountancy, can be found on the Board's website at <http://www.boa.virginia.gov>. To access this information, please click on the *Board Regulations* and *Code Database* links in the left column of the website. You may request a paper copy from the Board office by calling (804) 367-8505.

Please advise the Board, in writing, of your intention to be present. Accordingly, you should plan to present your case on the scheduled date. It is strongly recommended that you attend this IFF. If you do not appear at the IFF and exercise your right to be heard, the IFF may be conducted in your absence. The Board will make a final case decision based upon the Agency Record, which will include information obtained during the IFF. This Notice may be amended up to, and including, the day of the IFF Conference, as additional facts are obtained or additional related complaints are filed.

Should you have any questions concerning this matter, please contact Jean Grant, Enforcement Coordinator by telephone at (804) 367-0725, or by e-mail at jean.grant@boa.virginia.gov.

Sincerely,

Enclosures
Copy: Members, Board of Accountancy

XXXX XXXXXX
Enforcement Manager/Investigator